

February 17, 1997

Advisory Opinion 1997 - No. 1
Sub-contract approval

The following advisory opinion request is submitted on the Board's own motion.

QUESTION

Is a legislator or legislative employee required to file and/or obtain Board approval for a personal services contract by the legislator or employee, or spouse of either, with a private firm, if the purpose of the contract is to work on a state agency contract obtained by the employing firm?

OPINION

No filing or approval is required unless the legislator or legislative employee enters into a contract with the employing firm prior to the award of the state contract to the employing firm and the legislator or legislative employee is involved by name or in fact in the negotiations or bid proposal prior to the award of the agency contract.

ANALYSIS

RCW 42.52.030 completely prohibits a beneficial interest in a contract under the legislator or employee's authority. In the subcontracting situation posed, this situation would not normally occur. However, members and staff are reminded that beneficial interest includes a spousal interest. If the spouse is in a position to grant or supervise the contract on behalf of the agency, the legislator or employee is prohibited from being the contractor.

RCW 42.52.120 prohibits outside compensation except under specified circumstances. If the outside compensation is otherwise permissible, it requires ethics board filing and/or approval if the source of the compensation is a grant or contract with a state agency (RCW 42.52.120(2)).

Two of the Board's prior opinions involve situations where a legislator was an employee of a firm with an agency contract. In **Advisory Opinion 1995 - No. 6** the Board found that a Senator would not need to seek approval because the contract was competitive; and would not need to file with the Board because the contracting party was the employer, not the Senator. In that case the Senator did have a nominal stock interest , but did not have a controlling financial interest or substantial management responsibility.

In **Advisory Opinion 1996 - No. 3** the Board determined that a Representative who was also executive director of a local agency with state contracts was not subject to the filing and approval requirements because the contracts were with his employer and he is paid a stated salary– and would not lose his position or receive less compensation for his services– based on the presence or absence of the agency contracts.

In **Advisory Opinion 1995 - No. 12** the Board determined that approval would be required if the contract was non-competitive and the employee’s spouse was directly involved by financial interest or management responsibility.

In the question posed in this request, there are no assumed facts to indicate whether the presence or absence of the agency contract would directly affect the legislator or legislative employee’s compensation. If the Board assumes that the agency contract would have such an impact, the issue remains as to who is the real contracting party. As stated in **Advisory Opinion 1996 - No. 3**:

The Board is mindful that there may be situations where a state officer or employee may in fact be a party to a contract with a state agency even though the contract, on its face, does not identify the officer or employee as such.

If the sub-contractor is the real party in interest, and is directly financially affected by the agency contract, then the Board will look to the timing of the grant of the contract. If the sub-contract is obtained subsequent to the agency agreement with the employing firm, then the legislator or legislative employee does not have a contract with the agency which requires Board scrutiny. However, if the legislator or legislative employee, or spouse of either, obtains the contract prior to the award of the contract to the employing firm and the employing firm uses the name or otherwise identifies the potential sub-contractor in its proposal to the agency, then the proposed agreement would fall within the grants and contracts described in RCW 42.52.120(2). Such contracts must be filed with the Board, and prior approval is required if the contract is not awarded as part of an open and competitive bidding process in which more than one bid or grant application was received– (RCW 42.52.120(2)(a)).